
Appeal Decision

Site visit made on 14 March 2017

by Keith Manning BSc (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 23 March 2017

Appeal Ref: APP/J3720/W/16/3165373

**Rumer Stud, Long Marston Road, Welford on Avon, Stratford-upon-Avon
CV37 8AF**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Ms C Nicol against the decision of Stratford on Avon District Council.
 - The application Ref 16/01416/VARY, dated 27 April 2016, was refused by notice dated 23 June 2016.
 - The application sought planning permission for development described as 'retention of dwelling without compliance with the full requirement of Condition 3 of planning permission S90/1087 dated 26 February 1992 (as referred to in covering statement)' without complying with a condition attached to the planning permission granted for that development as so described, Ref S92/0712, dated 13 October 1992.
 - The condition in dispute is No 1 which states that: The occupancy of the dwellinghouse shall be limited to a person solely or mainly employed in connection with the running of the Rumer Stud Farm, as identified on the location plan, drawing no.2239-4 (including the dependents of such person residing with him/her or the widow or widower of such a person).
 - The reason given for the condition is: The dwelling is permitted solely to meet the needs of the Stud Farm.
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Decision

1. The appeal is allowed and planning permission is granted for development described as 'retention of dwelling without compliance with the full requirement of Condition 3 of planning permission S90/1087 dated 26 February 1992 (as referred to in covering statement)' at Rumer Stud, Long Marston Road, Welford on Avon, Stratford-upon-Avon CV37 8AF in accordance with the application Ref 16/01416/VARY dated 27 April 2016 , without compliance with condition number 1) previously imposed on planning permission Ref S92/0712 dated 13 October 1992 but subject to conditions 2), 4), 5), 6), 7), 9) and 10) imposed on that permission and subject to the following new condition:
 - 1) The occupancy of the dwellinghouse shall be limited to a person solely or mainly employed, or last employed, in connection with the running of the Rumer Stud Farm, as identified on the location plan, drawing no.2239-4 or a widow or widower or surviving civil partner of such a person, and to any resident dependants.

The new condition and repeated conditions are set out in the annex hereto.

Main Issue

2. The main issue is whether the condition in dispute is necessary and fit for purpose in the context of relevant policy.

Preliminary Matters

3. The appellant's original statement in support of the application to have the condition removed and subsequent statements in support of the appeal focus almost exclusively on contended inadequacies of the condition in terms of its precision and enforceability in the circumstances of the Rumer Stud Farm rather than the question of whether it remains a necessary fetter on the use of the dwelling house to which it applies, such as might be contested if circumstances were to radically alter at the enterprise. On that basis, I am able to consider the written submissions on their merits without the need for a more inquisitorial approach such as might be undertaken in a hearing or inquiry.
4. In referring to the relevant permissions in the description of development above I deploy, for clarity and consistency, the 4 digit reference numbers used on the decision notice (D.C.REF.) S92/0712 rather than the 5 digit equivalent reference numbers retrospectively deployed by the Council in recording the planning history of the site.¹

Reasons

5. The appeal site is a substantial house very clearly associated with a range of other buildings and managed rural land in the same ownership which taken together comprise a stud farm currently known as the Rumer Stud Farm and shown as such on detailed OS plans.² The house is fettered by the condition in dispute.
6. Planning Practice Guidance (PPG) elaborates on the advice of the National Planning Policy Framework ('the Framework') that planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. Amongst other things it states that *"there may be exceptional occasions where granting planning permission for development that would not normally be permitted on the site could be justified on planning grounds because of who would benefit from the permission. For example, conditions limiting benefits to a particular class of people, such as new residential accommodation in the open countryside for agricultural or forestry workers, may be justified on the grounds that an applicant has successfully demonstrated an exceptional need."* It also considers the relevant tests in more detail by posing key questions.
7. In this case the appellant argues at some length that the condition in dispute is not fit for purpose and should therefore be removed, but does not suggest an alternative form of condition to improve the efficacy of the control which, she says, is in effect non-existent. Rather than become embroiled in semantics peripheral to the main issue, it is pertinent in this case to examine the basic intentions of the condition and consider these relative to the appropriate tests.
8. The most relevant policy in the development plan is now AS.10 of the Council's Core Strategy, which concerns countryside and villages. Amongst the forms of development and uses defined as acceptable in principle in the countryside the policy includes, at part (i) *"A permanent dwelling for occupation by a person engaged in an agricultural operation or other form of use that can only reasonably be carried out in the countryside, subject to a functional need being established."* (The emphasis is mine.)
9. This policy is consistent with the Framework, at paragraph 55. This advises that isolated new homes in the countryside should be avoided unless there are special circumstances. These include, most pertinently, *"the essential need for a rural worker*

¹ For example, in the planning officer's report

² See, for example, the location plan for the planning application subject to appeal.

to live at or permanently near their place of work in the countryside." Although dwellings for rural workers justified on that basis tend to be modest, their planning justification is functional rather than financial and they tend to be provided by the relevant enterprise in any event. Affordability is a separate issue and, contrary to what is suggested in the appellant's statement, is not of itself relevant to the arguments in this case.

10. It is clear that policy, both national and local, to control development of housing in the countryside admits the possibility of workers other than those engaged in agriculture or forestry being housed exceptionally in new rural dwellings, if they need to be located there to effectively carry out their rural occupation. It is long established that equine enterprise such as the running of a stud farm is not considered to be 'agriculture' for planning purposes³, but it is self-evidently a form of use that can only reasonably be carried out in the countryside.
11. To avoid conflict with current national and local policy, therefore, a new dwelling in a location such as the appeal site would need to be functionally justified and fettered by a rural worker occupancy condition. Current policy is, broadly speaking, a continuation of the policy intentions in this regard that would have applied in 1992 when the main house at the Rumer Stud Farm was allowed (Ref S90/1087 now referred to by the Council as 90/01087/FUL). The condition at issue is attached to a subsequent variation of that initial consent as indicated above.
12. To achieve its object it must clearly operate on an ongoing basis and, while it has been in force for around 25 years, simply to remove it without adequate justification and without appropriate replacement would clearly undermine the intentions of policy as it stood at the time and as it stands now. The justification for doing so advanced by the appellant is that the condition is in practical terms imprecise and unenforceable. I return to those points in due course, once I have examined the other relevant tests.
13. The house subject to the condition is plainly an isolated dwelling in the countryside and it was plainly considered that the condition was necessary at the time it was allowed to serve the objects of relevant policy as outlined above. I have no evidence of any fundamental change of policy circumstances that would remove the ongoing necessity for the condition and therefore consider that a condition of this type continues to be needed to control the occupancy of the dwelling, which would not have been acceptable in planning terms without it. Moreover, the condition is no wider in scope than is necessary to achieve the desired objective, namely to tie it unequivocally to the running of the stud farm.
14. The condition plainly relates to planning objectives and is within the scope of the permission to which it is attached. It is therefore relevant to planning. Moreover, it is justified in principle by the nature of the development permitted, in this case a dwelling in the countryside and fairly and reasonably relates to it. Given the close and obvious relationship of the house with the remainder of the stud farm, which is an active and ongoing concern, it cannot be reasonably argued that the condition at issue is not relevant to it.
15. I have no evidence before me that the condition places unjustifiable and disproportionate burdens on the appellant or that the house is unacceptable in planning terms even with a condition of this type in place.⁴ Plainly that is not the case. It cannot therefore be argued that the type of condition is, in principle, unreasonable (but see below).

³ Belmont Farm v MHLG [1962] 13 P&CR 417

⁴ The principle articulated in the key questions associated with PPG being that "unreasonable conditions cannot be used to make development that is unacceptable in planning terms acceptable."

16. On the basis of the key questions referred to in the context of PPG it remains, therefore, to consider the appellant's proposition that the condition at issue is neither precise nor enforceable.
17. Whether or not the house could readily be severed in ownership terms from the associated stud farm operation including a range of stables and another dwelling understood to be a stud manager's house approved in July 2013 (Ref 13/00612/FUL) is rather beside the point. It is clearly occupied at present by a person occupied in connection with the running of the stud farm and essentially the house is part of the planning unit originally established by the implementation of planning permission S90/1087 granted in February 1992. The meaning of the term 'the Rumer Stud Farm' is very clear in that context and, should the unit become divided in ownership terms with the stud farm continuing in operation under, for example, an alternative name, nothing would be fundamentally changed in planning terms. A change of use of the stud farm with the benefit of planning permission, if implemented, would be a different scenario altogether but nothing of that sort is suggested as an imminent reality.
18. Against that background the condition at issue is clear as to what must be done to comply with it. The house must only be occupied by a person (or the dependents and/or surviving spouse thereof) whose sole or principal occupation is (or was, in the case of a surviving spouse remaining in the house) in some way connected with the running of the stud farm (as defined by reference to the plan referred to). Notwithstanding the considerable stature of the house, it seems to me to matter not at all whether such a person is a manager, an assistant manager, a veterinary nurse, a groom or any other functionary including an actively involved owner, provided their main source of income is derived from the activities of the stud farm such that there is a justifiable need to live close at hand. This is, however, not a broad category of person. Only a small number could conceivably qualify. A person mainly employed as a chef in a restaurant in the locality, to pick just one possible example, plainly would not qualify unless that person happened to be a surviving spouse of a qualifying stud farm worker.
19. Moreover, I do not accept the proposition that the reference to "Rumer Stud Farm" is akin to a condition inappropriately personal to a company. The term plainly refers to the activity of stud farming carried out at the planning unit "as identified on the location plan, drawing no.2239-4". There is no requirement for the enterprise itself to be called "Rumer Stud Farm" for company registration purposes, for example. Planning permission runs with the land and it is the activity that takes place on the land identified by the permission for the stud farm that matters for planning purposes and the reason for the condition refers simply to "the stud farm" in any event; and it is very clear what that is. The term "solely or mainly employed in connection with the running of" (the stud farm) is sufficiently precise because a stud farm is a recognised and recognisable form of rural activity and sole or main employment is readily established through source of income. Case law indicates⁵ that conditions can and should be construed in a common-sense and purposive fashion.
20. It is clear enough what the condition at issue applies to and what is required for compliance with it; and for all the above reasons I consider it to be sufficiently precise.
21. With precision tends to come ease of enforcement and in this case I foresee no real difficulty in the context of the rural occupancy typology of planning conditions of detecting a breach of control concerning the employment of occupiers of the dwelling, albeit I do accept that the retirement of a qualifying occupier would present its own difficulties of enforcement; and I am conscious in any event that, in drawing, presumably, upon the 'model condition' concerning agricultural and forestry workers prevailing at the time, the omission of a clause permitting occupation following retirement results in unreasonableness as the appellant contends.

⁵ Fawcett Properties v Bucks CC [1961] AC636; Arun DC v FSS & Brown [2006]; Barlow v SSTLR & Uttlesford DC [2002]

22. I am of course also conscious that the advice in the annex formerly associated with the retained Appendix A to Circular 11/95 listing model planning conditions was to the effect that it should not be necessary to tie occupation of agricultural and forestry workers to a specific business in the relevant locality. However, this case concerns a more specific form of rural enterprise and I have no evidence of other equine enterprises in the area that could make use of the dwelling in question. I am therefore satisfied in the circumstances that it remains necessary to tie the house to the stud farm for which it was justified and I have no evidence that the general principle which was previously articulated in respect of agricultural and forestry workers' dwellings is so relevant here that it should be applied in any event. It seems to me that in this case there is an ongoing need for specificity.
23. In conclusion, I consider there to be a continuing necessity for the condition and I also consider it to be, broadly speaking, fit for purpose. The principal exception to that conclusion is in respect of the omission of the standard provision for retirement, but that is easily remedied.
24. I therefore propose to do so by varying the condition in dispute, as I am empowered, so as to encompass the possibility of a retiree from the stud farm continuing to occupy the dwelling. In doing so I also propose to update it by reference to "any surviving civil partner" as opposed to simply "widow or widower." In accordance with PPG advice I will repeat for clarity those conditions of the existing permission containing the condition subject to appeal which remain relevant and should therefore continue to apply. I have no reason to depart from the Council's recommendation in that respect, namely conditions 2), 4), 5), 6), 7), 9) and 10) of the permission Ref S92/0712 dated 13 October 1992, which concern the safe and satisfactory operation of the highway on an ongoing basis.
25. I have considered the appeal decision at Hockley Heath referred to by the appellant⁶ but it is clear that that the imprecision and unenforceability found in that case concerned the definition of the term 'holiday let' and the Council's reliance on assumptions as to what constituted a 'holiday', leading my colleague to the conclusion, in all the circumstances of the case, that the disputed condition served no useful purpose. The circumstances here are markedly different in that, whilst the condition in dispute requires amendment for reasonableness, I have concluded that it does remain, in the context of relevant policy, a necessary fetter on the use of the house at the stud farm in question.
26. For the above reasons, and having taken all other matters raised into account, I consider the appeal should be allowed insofar as it is appropriate to vary but not remove the condition in dispute.

Keith Manning

Inspector

Annex: schedule of conditions

(New condition)

- 1) The occupancy of the dwellinghouse shall be limited to a person solely or mainly employed, or last employed, in connection with the running of the Rumer Stud Farm, as identified on the location plan, drawing no.2239-4 or a widow or widower or surviving civil partner of such a person, and to any resident dependants.

⁶ Ref APP/J3720/W/16/3151035

(Repeated but re-numbered conditions from permission Ref S92/0712 dated 13 October 1992)

- 2) The gallop shall only be used by horses stabled on the site.
- 3) The vehicular accesses to the site shall not be less than 6.0 metres wide for a distance of 20.0 metres into the site, as measured from the near edge of the public highway carriageway.
- 4) The gradient of the vehicular access into the site shall not be steeper at any point than 1 in 15 for a distance of 10.0 metres into the site, as measured from the near edge of the public highway carriageway.
- 5) Obstructions, including gates and barriers, shall not be placed within the vehicular access to the site any closer than 10.0 metres to the near edge of the public highway carriageway.
- 6) Gates provided at the entrance to the site shall not be hung so as to open to within 10.0 metres of the near edge of the public highway carriageway.
- 7) The vehicular access to the site shall not be constructed in such a manner as to reduce the effective capacity of any highway drain or ditch or to permit surface water to run off the site onto the public highway.
- 8) The vehicular access to the site shall not be used unless visibility splays have been provided with an 'x' distance of 2.4 metres 'y' distances of 120 metres. No structure, erection, trees or shrubs exceeding 0.9 metres in height above the adjoining highway carriageway shall be placed, allowed to grow or be maintained within the visibility splays so defined.

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